IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

MFA.No. 562 of 2002(B)

WCC.252/1998 of W.C.C., KANNUR
.....

APPELLANT/IIND OPPOSITE PARTY:

THE NEW INDIA ASSURANCE CO. LTD.,
REP. BY ITS ASSISTANT ADMINISTRATIVE
OFFICER, REGIONAL OFFICE,
KANDAMKULATHY TOWERS,
M.G. ROAD, ERNAKULAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS/APPLICANT AND 1ST OPPOSITE PARTY:

1. SANKARA NARAYANAN,
S/O.P.K.PARAMESHWARAN NAIR,
NADUKANIKIZHAKKE VEEDU,
KANIAMBATTA P.O.,
CHIKKALLUR, KALPETTA.

2. K.SIDDIQUE, S/O.KUNHIMOHAMMED,
KALLUVALAPPIL HOUSE,
ANAPARA, CHUNDALE, WAYANAD.

R1 BY ADV. SRI.N.J.ANTONY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 562 of 2002

JUDGMENT

Koshy, J.

The appellant Insurance Company questions the award of the Workmen's Compensation Commissioner. The first respondent in the appeal, while riding an autorickshaw, met with an accident, in the course of his employment. The autorickshaw was insured by the appellant Insurance company. As a result of the accident, he suffered the following injuries:

> "1. 7 x 1 cm lacerated wound on the dorsum of left hand.
>
> 2. 3 x 1 cm lacerated wound on the dorsum of middle finger.
>
> 3. 4 x 2 cm lacerated wound on the dorsum of ring finger.
>
> 4. crush injury to left hand and
>
> 5. compound fracture head of 2nd metacarpal bone left side."

It is contended that there was no employee-employer relationship. The first respondent was the registered owner of the autorickshaw and the accident occurred while the second respondent/ claimant was driving the vehicle. Therefore, the contention raised by the appellant Insurance Company cannot be accepted. It is not disputed that at the time of the accident, the vehicle was covered by valid policy of insurance, issued by the appellant insurance company.

2. Dr.C.M.Lakshmi Narayanan, M.S., Assistant Professor of Surgery, Government Medical College, Calicut, certified that the claimant suffered disability of 25% due to the injuries sustained in the accident. It is further stated that because of the accident, the first respondent will not be able to get the same grip as an autorickshaw driver, as his physical disability is 25%. Under Section 4(1)(c)(ii) of the Workmen's Compensation Act, if the injury is not a scheduled one, the Commissioner has to assess the loss of earning on the basis of the

assessment of loss of earning capacity by a qualified medical practitioner. It seems that before the Tribunal no serious objection was raised in marking the certificate and no application for referring the claimant for medical examination was made. Therefore, the Commissioner has fixed loss of earning capacity at 25% and awarded compensation taking into account Rs.2,000/- as the monthly salary, which is not disputed. We see no ground to disagree with the calculation and no substantive question of law is arising in the matter of calculation of compensation. But, the Tribunal, after calculating the compensation with pendente lite interest, again awarded interest on the total amount, which will amount to levy of compound interest. The statutory liability under Section 4A (2) of the Act is to pay simple interest at 12% per annum.

3. In the above circumstances, the liability of the Insurance Company is to pay compensation of Rs.67,200/- with interest at 12% per annum from the

date of accident till date of deposit. The deposit was made on 14.5.2002. The above amount can be disbursed to the claimant according to law after deducting the amount already paid. Excess amount, if any, deposited should be refunded to the Insurance Company.

The appeal is allowed in part.

(J.B.Koshy, Judge)

5th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.562 of 2002

JUDGMENT

5th June, 2007